

ARTICLE 68

VESTED PROPERTY RIGHTS

Law reviews: For article, "Vested Property Rights in Colorado: The Legislature Rushes in Where . . .", see 66 Den. U.L. Rev. 31 (1988); for article, "Colorado Establishes a Statutory Vested Property Rights Scheme", see 17 Colo. Law. 263 (1988); for article, "Changes to Colorado's Vested Property Rights Law", see 28 Colo. Law. 83 (July 1999).

Section

24-68-101. Legislative declaration.

24-68-102. Definitions.

24-68-102.5. Applications - approval by local government.

24-68-103. Vested property right - establishment - waiver.

24-68-104. Vested property right - duration - termination.

24-68-105. Subsequent regulation prohibited - exceptions.

24-68-106. Miscellaneous provisions.

24-68-101. Legislative declaration.

(1) The general assembly hereby finds and declares that:

(a) It is necessary and desirable, as a matter of public policy, to provide for the establishment of vested property rights in order to ensure reasonable certainty, stability, and fairness in the land use planning process and in order to stimulate economic growth, secure the reasonable investment-backed expectations of landowners, and foster cooperation between the public and private sectors in the area of land use planning.

(b) The ability of a landowner to obtain a vested property right after local governmental approval of a site specific development plan will preserve the prerogatives and authority of local government with respect to land use matters, while promoting those areas of statewide concern described in paragraph (a) of this subsection (1).

(c) The establishment of vested property rights will promote the goals specified in this subsection (1) in a manner consistent with section 3 of article II of the state constitution, which guarantees to each person the inalienable right to acquire, possess, and protect property, and is therefore declared to be a matter of statewide concern.

Source: L. 87: Entire article added, p. 1837, § 1, effective January 1, 1988.

24-68-102. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Application" means a substantially complete application for approval of a site specific development plan that has been submitted to a local government in compliance with applicable requirements established by the local government. For local governments that have provided for the review and approval of site specific development plans in multiple stages, "application" means the original application at the first stage in any process that may culminate in the ultimate approval of a site specific development plan.

(1.5) "Landowner" means any owner of a legal or equitable interest in real property, and includes the heirs, successors, and assigns of such ownership interests.

(2) "Local government" means any county, city and county, city, or town, whether statutory or home rule, acting through its governing body or any board, commission, or agency thereof having final approval authority over a site specific development plan, including without limitation any legally empowered urban renewal authority.

(3) "Property" means all real property subject to land use regulation by a local government.

(4) (a) "Site specific development plan" means a plan that has been submitted to a local government by a landowner or such landowner's representative describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but need not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a specially planned area, a planned building group, a general submission plan, a preliminary or general development plan, a conditional or special use plan, a development agreement, or any other land use approval designation as may be utilized by a local government. What constitutes a site specific development plan under this article that would trigger a vested property right shall be finally determined by the local government either pursuant to ordinance or regulation or upon an agreement entered into by the local government and the landowner, and the document that triggers such vesting shall be so identified at the time of its approval.

(b) "Site specific development plan" shall not include a variance, a preliminary plan as defined in section 30-28-101 (6), C.R.S., or any of the following:

(I) A sketch plan as defined in section 30-28-101 (8), C.R.S.;

(II) A final architectural plan;

(III) Public utility filings; or

(IV) Final construction drawings and related documents specifying materials and methods for construction of improvements.

(5) "Vested property right" means the right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan.

Source: L. 87: Entire article added, p. 1838, § 1, effective January 1, 1988. L. 99: (1) and (4) amended

and (1.5) added, p. 860, § 1, effective May 24.

24-68-102.5. Applications - approval by local government.

(1) Except as otherwise provided in subsection (2) of this section, an application for approval of a site specific development plan as well as the approval, conditional approval, or denial of approval of the plan shall be governed only by the duly adopted laws and regulations in effect at the time the application is submitted to a local government. For purposes of this section, "laws and regulations" includes any zoning law of general applicability adopted by a local government as well as any zoning or development regulations that have previously been adopted for the particular parcel described in the plan and that remain in effect at the time of the application for approval of the plan.

(2) Notwithstanding the limitations contained in subsection (1) of this section, a local government may adopt a new or amended law or regulation when necessary for the immediate preservation of public health and safety and may enforce such law or regulation in relation to applications pending at the time such law or regulation is adopted.

Source: L. 99: Entire section added, p. 861, § 2, effective May 24.

24-68-103. Vested property right - establishment - waiver.

(1) (a) Each local government shall specifically identify, by ordinance or resolution, the type or types of site specific development plan approvals within the local government's jurisdiction that will cause property rights to vest as provided in this article. Any such ordinance or resolution shall be consistent with the provisions of this article. Effective January 1, 2000, if a local government has not adopted an ordinance or resolution pursuant to section 24-68-102 (4) specifying what constitutes a site specific development plan that would trigger a vested property right, then rights shall vest upon the approval of any plan, plat, drawing, or sketch, however denominated, that is substantially similar to any plan, plat, drawing, or sketch listed in section 24-68-102 (4).

(b) A vested property right shall be deemed established with respect to any property upon the approval, or conditional approval, of a site specific development plan, following notice and public hearing, by the local government in which the property is situated.

(c) A vested property right shall attach to and run with the applicable property and shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan including any amendments thereto. A local government may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested property right, although failure to abide by such terms and conditions will result in a forfeiture of vested property rights. A site specific development plan shall be deemed approved upon the effective date of the local government legal action, resolution, or ordinance relating thereto. Such approval shall be subject to all rights of referendum and judicial review; except that the period of time permitted by law for the exercise of such rights shall not begin to run until the date of publication, in a newspaper of general circulation within the jurisdiction of the local government granting the approval, of a notice advising the general public of the site specific development plan approval and creation of a vested property right pursuant to this article. Such publication shall occur no later than fourteen days following approval.

(2) Zoning that is not part of a site specific development plan shall not result in the creation of vested property rights.

Source: L. 87: Entire article added, p. 1838, § 1, effective January 1, 1988. L. 99: (1) amended, p. 861, § 3, effective May 24.

24-68-104. Vested property right - duration - termination.

(1) A property right which has been vested as provided for in this article shall remain vested for a period of three years. This vesting period shall not be extended by any amendments to a site specific development plan unless expressly authorized by the local government.

(2) Notwithstanding the provisions of subsection (1) of this section, local governments are hereby authorized to enter into development agreements with landowners providing that property rights shall be vested for a period exceeding three years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles, and market conditions. Such development agreements shall be adopted as legislative acts subject to referendum.

(3) Following approval or conditional approval of a site specific development plan, nothing in this article shall exempt such a plan from subsequent reviews and approvals by the local government to ensure compliance with the terms and conditions of the original approval, if such reviews and approvals are not inconsistent with said original approval.

Source: L. 87: Entire article added, p. 1839, § 1, effective January 1, 1988.

24-68-105. Subsequent regulation prohibited - exceptions.

(1) A vested property right, once established as provided in this article, precludes any zoning or land use action by a local government or pursuant to an initiated measure which would alter, impair, prevent, diminish, impose a moratorium on development, or otherwise delay the development or use of the property as set forth in a site specific development plan, except:

(a) With the consent of the affected landowner;

(b) Upon the discovery of natural or man-made hazards on or in the immediate vicinity of the subject property, which hazards could not reasonably have been discovered at the time of site specific development plan approval, and which hazards, if uncorrected, would pose a serious threat to the public health, safety, and welfare; or

(c) To the extent that the affected landowner receives just compensation for all costs, expenses, and liabilities incurred by the landowner after approval by the governmental entity, including, but not limited to, costs incurred in preparing the site for development consistent with the site specific development plan, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultants' fees, together with interest thereon at the legal rate until paid. Just compensation shall not include any diminution in the value of the property which is caused by such action.

(2) The establishment of a vested property right shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by a local government, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.

Source: L. 87: Entire article added, p. 1839, § 1, effective January 1, 1988. **L. 95:** IP(1) and (1)(c) amended, p. 1153, § 1, effective May 31.

24-68-106. Miscellaneous provisions.

- (1) As used in this article, the term "development" includes redevelopment.
- (2) A vested property right arising while one local government has jurisdiction over all or part of the property included within a site specific development plan shall be effective against any other local government which may subsequently obtain or assert jurisdiction over such property.
- (3) Nothing in this article shall preclude judicial determination, based on common law principles, that a vested property right exists in a particular case or that a compensable taking has occurred.
- (4) This article shall apply only to site specific development plans approved on or after January 1, 1988.

Source: L. 87: Entire article added, p. 1840, § 1, effective January 1, 1988.
